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In re Patent No. 7,925,657	:
Issued: April 12, 2011	: DECISION ON PATENT TERM and
Application No. 10/802,958	: NOTICE OF INTENT TO ISSUE
Filed: March 17, 2004	: CERTIFICATE OF CORRECTION
Atty. Dkt. No.: 16113-0326001	:
	:

This is a decision on the application for patent term adjustment filed June 9, 2011 requesting that the patent term adjustment be increased from 1504 days to 1,885 days.

The request for reconsideration of the patent term adjustment (PTA) pursuant to 37 CFR 1.705(d) is **GRANTED TO THE EXTENT INDICATED HEREIN.**

The above-identified application matured into U.S. Pat. No. 7,925,657 on April 12, 2011. The patent issued with a patent term adjustment of 1,504 days. The instant application for patent term adjustment was timely filed in accordance with 37 CFR 1.705(d). Patentees argue that the patent is entitled to 1,379 days under 37 CFR 1.702(b). Patentees further assert that the overall patent term adjustment should be reduced an additional eight days in connection with the request for continued examination filed November 17, 2010. Thus, patentees assert that the patent is entitled to an overall patent term adjustment of 1,885 days (611 days under 37 CFR 1.702(a) plus 1,379 days under 37 CFR 1.702(b) plus 990 days under 37 CFR 1.702(e) less 990 overlapping days less 105 days under 37 CFR 1.704).

With respect to further reduction in connection with the filing of the request for continued examination on November 17, 2010, the patent is subject to seven additional days of reduction in accordance with 37 CFR 1.704(c)(9)(i). The reduction commenced August 19, 2010, the day after the date that the first Notice of Allowance was mailed on August 18, 2010, and ended August 25, 2010, the date that the second Notice of Allowance was mailed. Accordingly, the overall applicant delay under 37 CFR 1.704 totals 104 days.

Patentees' arguments that the period of adjustment pursuant to 37 CFR 1.702(b) is 1,379 days rather than zero days have been carefully considered and found partly persuasive. The period of adjustment pursuant to 37 CFR 1.702(b) was properly increased an additional 258 days.

35 USC 154(b)(1)(B) states in relevant part:

Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not

including — (i) any time consumed by continued examination of the application requested by the applicant under section 132(b).

37 CFR 1.702(b) states in relevant part:

Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application, but not including: (1) Any time consumed by continued examination of the application under 35 U.S.C. 132(b).

37 CFR 1.703(b) states in relevant part:

The period of adjustment under § 1.702(b) is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the sum of the following periods: (1) The number of days, if any, in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued.

Accordingly, in the instant matter, and in compliance with the provisions of law and rules set forth above, the period of adjustment under § 1.702(b) is 1248 days, the period from November 17, 2010, the date that the RCE was filed, to April 12, 2011, the date that the patent issued, being excluded from the period of adjustment under 37 CFR 1.702(b).

In view thereof, at the time of issuance, the patent was entitled to an overall adjustment of 1,755 days (611 days under 37 CFR 1.702(a) + 1,248 days under 37 CFR 1.702(b) + 990 under 37 CFR 1.702(e) – 990 days under 37 CFR 1.702(b)(4) – 104 days of applicant delay under 37 CFR 1.704).

Receipt is hereby acknowledged of the required \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Corrections Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by 1,755 days.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3205.

/ALESIA M. BROWN/

Alesia M. Brown
Attorney Advisor
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,925,657

DATED : April 12, 2011

DRAFT

INVENTOR(S) : Pflieger, et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 1504 days

Delete the phrase "by 1504 days" and insert -- by 1,755 days --